

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00019, for the operation of a Class II bar, d/b/a Olde Towne Tavern, with accessory live entertainment, under Section 3.352.1 and 5.042 of the Zoning Bylaw, as applied for by TMD, Inc, at 15-33 Pray Street (A.K.A. 1 Pray Street) (Map 11C, Parcel 274, B-G Zoning District, MP and DR overlay district) with the following conditions:

1. The hours of operation shall be from 11:00 a.m. to 1:00 a.m., with all patrons off the premise by 1:15 a.m., seven (7) days per week.
2. The interior of the establishment shall be substantially in accordance with the floor plan, dated April 6, 2011, and stamped approved by the Zoning Board of Appeals on April 28, 2011. Any substantial changes to the approved floor plan shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
3. The service of food shall be provided in accordance with the liquor license.
4. All exterior lighting shall be designed or arranged to be downcast and shall provide adequate lighting for the sidewalks, security and safety. All lighting not specifically required for safety purposes, shall be extinguished by 2:00 a.m. or one (1) hour after closing. The large light at the peak of the west side of the building should either be removed, or repaired/replaced to ensure that it is properly shielded, or downcast.
5. The handicapped access ramp, the sidewalk along the north side of the building, and the main entrance shall be free and clear at all times for the use by pedestrians and/or patrons.
6. Live entertainment shall:
  - a. Produce sound not in excess of 70 db (A) at the property line in accordance with Section 5.0422.
  - b. Only be offered between the hours of 9:00 p.m. and 1:00 a.m.
  - c. Be limited to three (3) performers
7. The exterior awning signs, shall be as shown on the sign plan dated April 14, 2011, and the three (3) neon signs shall be as shown on the approved photograph – each of which has been approved by the Design Review Board and stamped approved by the Zoning Board of Appeals on April 28, 2011. Any substantial changes to the signs shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
8. All employees who serve alcohol, including any managers, shall be appropriately trained and certified in responsible methods of alcohol service (e.g. TIPS, Bar Code or ServSafe).

9. The use shall be operated substantially in accordance with the Management Plan stamped approved by the Zoning Board of Appeals on April 28, 2011. However, any patrons gathered outside awaiting entry shall be contained on the sidewalk along the west side of the building heading south. Gates or barriers may be used so long as they are appropriately placed in the parking area. Gates shall not be placed, and patrons shall not gather, in a manner that blocks access to the handicapped accessible ramp or the sidewalk along the north side of the building. Any substantial change to the Management Plan shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
10. In accordance with the approved Management Plan, the trash receptacles shall be stored at the rear of the building and the waste oil shall be properly maintained and stored within secured drums.
11. The management shall be responsible for ensuring that the exterior of the establishment is free of trash and litter.
12. Upon a change of ownership, the new owner shall present a Management Plan - and any changes to the premises - to the Zoning Board of Appeals at public meeting. The purpose of the public meeting shall be for the Zoning Board of Appeals to determine whether any changes are substantial enough to require a new Special Permit.

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Eric Beal, Acting Chair  
Amherst Zoning Board of Appeals

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DATE

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** TMD, Inc. d/b/a Olde Towne Tavern  
15-33 (A.K.A 1 Pray Street) Pray Street, Amherst, MA 01002

**Property owner:** Jones Property, LP  
15A Pray Street, Amherst, MA 01002

**Date application filed with the Town Clerk:** February 25, 2011

**Nature of request:** For a Special Permit to establish a new Class II restaurant or bar, with accessory live music, under Section 3.352.1 and 5.042 of the Zoning Bylaw in the space formerly occupied by Charlie's Tavern

**Address:** 15-33 (A.K.A 1 Pray Street) Pray Street, (Map 11C, Parcel 274, B-G Zoning District, MP & DR overlay districts)

**Legal notice:** Published on April 13, 2011 and April 20, 2011 in the Daily Hampshire Gazette and sent to abutters on April 14, 2011

**Board members:** Eric Beal, Mark Parent, Keith Langsdale

**Submissions:**

- Project Application Report, dated April 21, 2011.
- ZBA application, filed with Town Clerk on March 25, 2011.

In one (1) packet:

- Management Plan.
- Floor Plan, dated April 6, 2011.
- Sign Plan, dated April 14, 2011.
- Existing conditions photographs showing existing signs, entrances and trash storage areas.
- Menu.

Submitted by Town staff:

- ZBA FY2006-00051 – for Charlie's – with all approved plans.
- Town GIS location map.

**Site Visit:** April 27, 2011

Eric Beal, Mark Parent and Keith Langsdale met with the applicant, Michael McLaughlin on-site. The following was observed:

- The location of the property adjacent to existing parking areas and other commercial businesses within the same zoning district.
- The interior of the existing establishment, including the location of egresses, restrooms, kitchen, bar area and live music.
- The exterior of the building including existing lighting fixtures on the west side and the approximate location of the trash and waste oil storage.

- The location of the sidewalks along the west and north side of the building, including the location of the existing handicapped accessible ramp.

**Public Hearing: April 28, 2011**

The applicant, Michael McLaughlin, was accompanied by his attorney, Joel Castleman, and business partner, Tom Murphy.

Mr. Parent identified that he is a minority owner of the Amherst Brewing Company and stated that this will not adversely affect his ability review the facts of the case.

Mr. Castleman presented the application. His statements are summarized as follows:

- The applicant is seeking a Special Permit for a Class II bar, with accessory live music. The hours of operation will be from 11:00 A.M. to 1:00 A.M., with patrons leaving the establishment by 1:15 A.M. A liquor license from the Amherst Select Board has been granted, subject to a Special Permit for hours of operation later than 11:30 p.m.
- The location of the space, formerly occupied by Charlies Tavern, is located in the General Business Zoning District and is in a building containing a laundromat and cleaners. The property is bordered to the north by other commercial properties in the same zoning district and is bordered on the east by the West Cemetery, which is in the General Residence Zoning District. The property is located within the Municipal Parking District which does not require parking for the use. However, there is both private and public parking in close proximity.
- The music inside the establishment will either be from a juke box or occasional live music, such as 2 or 3 musicians playing amplified and/or acoustic music. The level of the live music will be such that it will not be heard outside of the building, which already contains some soundproofing by the prior owner.
- Although there is an existing, shared dumpster onsite, the proposal is to store the trash and recycling at the exterior rear of the building and will be kept in standard plastic, covered, rollaway containers provided by the hauler. Fryolator grease will also be stored at rear of the building, and will be kept in secure metal drums.
- The exterior lighting will consist of the existing fixtures, both at each entrance/exits, the west façade and new fixtures within the awning. The flood lights on the west building façade are under the control of the tenant and can be controlled to be pointed downward, onto the existing sidewalk. Those lights are important from a safety and liability concern due to the curb along the edge of the sidewalk. All lighting that is not for security or safety will be off after operating hours.
- The intent of the applicant is to serve food during all hours of operation and they will try to establish a more steady lunch crowd by offering good, reasonably priced lunch for employees and others in the area. A reduced menu may be offered during later hours to cut down on the cost of running a full kitchen.
- The applicants own other establishments in Town, including Stacker's Pub and McMurphy's. The applicants intend to employ enough staff to manage all patrons inside and out. Typically, during busier times there will be two (2) bartenders and three (3) doormen. The number of employees may vary depending on the busyness of the establishment. Because the applicants have prior experience, they will add additional staff as needed. All ID's will be checked electronically using a magnetic strip and all doormen will be trained in the applicable alcohol service training.
- One (1) of the employees will always be stationed outside of the building to manage those patrons waiting to enter.

- The proposed signs will consist of the lettering “Olde Towne Tavern” on two new awnings, a new icon, a beer stein, on a small awning over the door, and two (2) or three (3) neon lights mounted in the windows on the west façade.

In response to a question from Mr. Parent, the applicant stated that approximately 30-40 % of the business may be attributed to the sale of food. Mr. Castleman stated that the proposal is for a bar – as defined in the Zoning Bylaw. He noted the food will be served, but it is incidental to the service of alcohol.

The Board members and applicant discussed when patrons under 21 may, or may not be allowed in the establishment. The applicant originally stated that no one under 21 would be allowed to enter after 8:00 p.m. It was noted that other regulations from the ABCC strictly enforce underage regulations, where zoning may not.

The location of the trash storage was discussed. Mr. Beal asked whether the trash and recycling containers could be either screened or moved to a less visible location behind the building. Mr. McLaughlin stated the location was chosen because it is in the alley between the building and the West Cemetery – which is not highly visible. The storage of the waste oil will also be in this area.

In response to a question from Mr. Langsdale, the applicant indicated the food service will be from a service window and there will not be wait staff.

Mr. Parent MOVED to close the evidentiary portion of the public hearing. Mr. Langsdale seconded the motion and the Board VOTED unanimously to close the public hearing.

#### **Public Meeting:**

Based on the testimony, the use is a Class II bar, as the service of food will be accessory to the service of alcohol. It was noted that food service shall be provided in accordance with the requirements of the liquor license, which requires that a variety of hot and cold sandwiches, soups, salads, desserts, and non-alcoholic beverages until four hours before closing and cold sandwiches and non-alcoholic beverages as long as alcohol is served.

The Board determined that the regulation of the age of patrons is the responsibility of the owners of the establishment and that underage drinking is enforced by State regulations.

The large light at the peak of the west side of the building should be repaired or replace to insure that it is properly shielded, or downcast. Upon review of the submitted sign plan information and testimony from the applicant that the neon signs are approximately 2 feet by 2 feet, the Board determined that the lettering on the awnings and the neon signs are less than the 10% limitation of Section 8.20 of the Zoning Bylaw.

The Board discussed whether to maintain the expiration upon change of ownership condition of the previous permit. Mr. Parent argued that requiring a new permit is burdensome and that it should not be conditioned in that way because the property has been essentially the same use for nearly 20 years. He also argued that conditioning a special permit to expire upon change of ownership makes it difficult for new owners to obtain bank loans. He stated that it should be sufficient for a new owner to present a Management Plan to the Board at a public meeting to demonstrate compliance with the Special Permit and/or for the Board to determine if changes are substantial enough to require a new Special Permit.

**Specific Findings:**

The Board found under Section 5.042 of the Zoning Bylaw, for live entertainment, that:

5.0420 - *Such entertainment shall be clearly accessory and incidental to the principal use.* The restricted hours, from 9:00 p.m. to 1:00 a.m., and the limited number of musicians illustrates that the live entertainment is incidental to the principal use.

5.0421 - *Sound produced by the proposed entertainment shall not generally exceed 70 dB (A) as measured at any boundary of the property on which the establishment is located, as determined by the regulations adopted pursuant to Section 5.0422.* The permit requires that this noise level not exceed the 70 dB (A) at the property line.

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 - *The proposal is suitably located in the neighborhood in which it is proposed; and, the proposal is compatible with existing Uses and other Uses by right in the same District.*

The property is located within the General Business Zoning District (B-G) where the use is allowed by Special Permit. The use is consistent with other uses in the area and is appropriate for the property because the use is essentially the same as the former occupant. It is compatible with the area, which contains at least two (2) or more similar establishments in close proximity, is near other business uses and is bordered by the West Cemetery.

10.382 - *The proposal will not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features.* The proposal includes conditions which require downcast lighting and compliance with decibel levels at the property line.

10.383 & 10.385 & 10.387 - *The proposal will not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; reasonably protects the adjoining premise from detrimental uses; and, provides convenient and safe vehicular and pedestrian movement within the site and adjacent property.* The establishment is substantially similar to the former use of the space and does not include any changes to the hours of operation nor the exterior of the building, other than signs. The permit includes a condition which will maintain clear pedestrian access on the sidewalk along the north side of the building and from the main egress to the building by directing any patrons awaiting entry to gather on the sidewalk along the west side of the building heading south.

10.384 - *Adequate and appropriate facilities will be provided for the proper operation of the proposed use.* The proposal includes trash receptacles, waste oil storage, and adequate area for the receiving of goods and supplies. Additionally, the establishment includes a kitchen, restrooms and two means of egress. The proposal is in close proximity to both private and public parking areas.

10.386 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.* The property is located in Municipal Parking District, which does not require any parking be provided on-site for the use. The proposal includes the installation of new awnings and signs. The size of the signs, including three (3) neon signs, is under the 10% limitation of Section 8.20 of the Zoning Bylaw.

10.388 & 10.389 - *The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products; and provides adequate disposal or storage of refuse, recyclables and sewerage.* The property contains a commercial alley behind the building. Delivery vehicles may use this area to prevent any impact to any adjoining premises. The property is connected to Town sewer and there will be adequate trash receptacles and waste oil storage provided and kept at the rear of the building. The permit will require that Management be responsible for checking the exterior of the premise daily for trash or litter.

10.393 - *The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions.* All exterior lighting shall be designed or arranged to be downcast and shall provide adequate lighting for the sidewalks, security and safety. The large light at the peak of the west side of the building should be repaired or replaced to insure that it is properly shielded, or downcast. All lighting not specifically required for safety purposes, shall be extinguished by 2:00 a.m. or one (1) hour after closing.

10.396 – *The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, and similar features.* The location of the trash storage is located within an alley at the back of the building and the receptacles will be the standard roll away bins which will be removed frequently, in accordance with the Management Plan.

10.398 – *The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it enhances the quality of life in a village center.* The proposal is suitably located within the General Business Zoning District and is compatible with the other commercial uses in the area. The proposal contributes to the Land Use goal of the Master Plan to encourage economic development and a “sustainable, attractive town with a vital downtown and viable mixed-use village centers well connected to livable and diverse neighborhoods”.

#### **Public Meeting – Zoning Board Decision**

Mr. Parent moved to APPROVE the application with conditions Mr. Langsdale seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2011-00019, for the operation of a Class II bar, d/b/a Olde Towne Tavern, with alcohol service and accessory live entertainment, under Section 3.352.1 and 5.042 of the Zoning Bylaw, as applied for by TMD, Inc, at 15-33 Pray Street (A.K.A. 1 Pray Street) (Map 11C, Parcel 274, B-G Zoning District, MP and DR overlay district) with conditions.

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ERIC BEAL

\_\_\_\_\_  
MARK PARENT

\_\_\_\_\_  
KEITH LANGSDALE

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2011.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2011  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
in the Hampshire County Registry of Deeds.